IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2006

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.46531 OF 2002

Retired Official's Association
Chennai, Reg.No.126/99
Rep. by its Acting President
K.S.Krishnan .. Petitioner

vs.

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
Education Department,
Madras 9.

2. The Chief Education Officer,
Dharmapuri.

3. The Assistant Elementary Officer,
Kaveripattinam.

4. The Assistant Director,
Local fund Audit,
Dharmapuri.

5. Muthukumarasamy

6. The Inspector of Police,
District Crime Branch-EOW-II,
Dharmapuri. .. Respondents

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The Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct respondents 1 to 5 to pay the retirement's benefits to the members of the petitioner- association more fully described and set out in the annexure (typed set) filed in support of the writ petition.

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For petitioner : Mr.V.Raghavachari

For respondent
1 to 4 and 6 : Mr.C.Thirumaran
Government Advocate

For respondent 5 : No Appearance

O R D E R

The writ petition has been filed for the issuance of a writ of mandamus to direct respondents 1 to 5 to pay the retirement benefits to the members of the petitioner association, more fully described and set out in the annexure:

2. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for respondents 1 to 4 and 6.

3. The brief facts of the case, as stated by the petitioner, are as follows:

The members of the petitioner association are retired teachers under the control of the second and third respondents. On account of reaching the age of superannuation, they have demitted their office and were awaiting payment of their retirement benefits. Though certain amounts have been paid by the second and third respondents by way of demand drafts, they came to realise that the entire amounts due had not been paid. In response to the letter of the third respondent, the fourth respondent had given the particulars of dues that each of retired teacher was to receive. When the members of the petitioner association had lodged a complaint with regard to the non-payment of their retirement benefits, they had come to learn that one Muthukumarasamy, the fifth respondent herein, a Junior Assistant in the Office of the third respondent, had diverted the funds and misappropriated the same. It was also learnt that the third respondent had lodged a complaint against the fifth respondent, on 12.9.2002 and the Inspector of Police, District Crime Branch-EOW II, Dharmapuri, had registered a case in Crime No.9 of 2002, under Sections 468,471,409 & 420 of the Indian Penal Code. The members of the petitioner association had learnt of the charges framed against the fifth respondent from the news published in the Tamil news paper, 'Dinamani', dated 16.5.2002, and also based on the scrutiny of the various records maintained by the Office of the third respondent. On the date of the complaint, the fifth respondent had misappropriated amounts to the tune of Rs.49,69,389/-.

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4. It is the case of the third respondent that the bills had been collected by the fifth respondent after receipt of the actual amount from the Treasury. The members of the petitioner association were surprised to know that the fifth respondent had not been apprehended so far and that no serious action had been taken against the fifth respondent. In any case the retirement benefits of the members of the petitioner association, whose names are listed and annexed in the typed set of papers filed in support of the writ petition, have to be paid by the respondents, more particularly by the third respondent, in accordance with law. Non-payment of the amounts due to the members of the petitioner association would amount to infringement of their right to life and livelihood, enshrined in Article 21 of the Constitution of India.

5. In the counter affidavit filed by the third respondent, it is submitted that the fifth respondent, who was a Junior Assistant, had claimed the provident fund amounts and had paid a lesser amount than the actual amount due to the members of the petitioner association and the third respondent, on receipt of the complaint from the petitioner association had called for an explanation from the fifth respondent. It is further submitted that the entire amounts had been claimed from the Sub-Treasury, Krishnagiri, and handed over to the fifth respondent and one K.Kolandai, Record Writer, had admitted to the misappropriation of the amounts from the Teacher's Provident Fund.

6. It has also been stated that proper steps had been taken and a complaint had been lodged against the fifth respondent. Thereafter, the fifth respondent had surrendered before the Principal District Sessions Judge, Krishnagiri, and he was placed under Judicial Custody. Later, he was released on a conditional bail granted by the Principal District Sessions Judge, Krishnagiri. Since the case is pending before the said Principal District Sessions Judge, further action could be taken against the fifth respondent only after the judgment is pronounced by the said Court. Since steps had been taken against the fifth respondent for the recovery of the amounts misappropriated by him, the members of the petitioner association can be paid retirement benefits only after the necessary orders had been obtained from the concerned Court.

7. From the contentions put forth by the learned counsels appearing on behalf of the petitioner association and on behalf of the respondents and on a perusal of the records available, it is seen that even according to the third respondent, the fifth respondent had misappropriated the provident fund amounts due to the members of the petitioner association. Further, it is not the case of the respondents that the amount had been drawn from the Treasury by the members of the petitioner association or their representatives. It has been clearly admitted that it is only the fifth respondent, a

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Government employee, who was entrusted with the job of drawing the amounts from the Government Treasury and disbursing it to the members of the petitioner association as retirement benefits. In such circumstances, any misappropriation on the part of the fifth respondent would not in any way discharge the liability of the other respondents in paying the retirement benefits due to the members of the petitioner association. Any inability on the part of the concerned authorities to take appropriate action against the fifth respondent to recover the misappropriated amounts will not dilute their responsibility from discharging their obligations. If prompt action had not been taken against the fifth respondent, and if the amounts allegedly misappropriated by the fifth respondent have not been recovered, it would only show the inefficiency or lack of will on the part of the concerned authorities to take appropriate steps in this regard. However, it is of no consequence with regard to the amounts due and payable to the members of the petitioner association as retirement benefits. It is admitted by the learned counsel appearing for respondents 1 to 4 and 6, that the third respondent is the authority, who is responsible to pay the retirement benefits to the members of the petitioner association.

8. For the reasons stated above, the third respondent is directed to pay the entire amounts due to the members of the petitioner association, whose names are listed in the annexures to the typed set of papers filed along with the writ petition, with the interest at 6% per annum, from the date of filing of the writ petition till the date of disbursal of the amounts, within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is disposed of. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government
The State of Tamil Nadu
Education Department
Madras - 9.

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2. The Chief Education Officer,
Dharmapuri.

3. The Assistant Elementary Officer,
Kaveripattinam.

4. The Assistant Director,
Local fund Audit
Dharmapuri.

5. The Inspector of Police,
District Crime Branch-EOW-II,
Dharmapuri.

+ one C.C. to Mr.V.Raghavachari, Advocate SR No.49160

+ one C.C. to The Government Pleader SR No.49239

RS(CO)
CGS(28/11/2006)

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